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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,399	07/18/2003	David Watermeier	58550.US/1720.0	4644
408	7590	03/09/2004	EXAMINER	
LUEDEKA, NEELY & GRAHAM, P.C. P O BOX 1871 KNOXVILLE, TN 37901			NGUYEN, VI X	
			ART UNIT	PAPER NUMBER
			3731	
DATE MAILED: 03/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/623,399

Applicant(s)

WATERMEIER ET AL.

Examiner

Vy Q. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 1 and 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/6/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

Claims 1, 4 are objected to because of the following informalities:

Claim 1 recites "a elongate body" (line 2) instead of -- an elongate body --, and "potion" (line 3) instead of --portion--. Appropriate correction is required.

Claim 4 recites "a elongate body" (line 2) instead of -- an elongate body --, and "potion" (line 3) instead of --portion--. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being by McKnight (3,624,747).

As to claim 1, McKnight (Figs. 1-6) discloses a one-piece surgical device (10) for perforating an amniotic membrane, the device comprising a elongate body (12) defining a tip portion (14) and an opposite handle portion (16), with the tip portion including a blunt end surface (18) and a rearwardly projecting hook portion (20) which is adjacent an upper edge of the body and the handle portion includes one or more raised surfaces

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(16) located on the sides of the body closely adjacent the upper edge, wherein a user grasping the device may feel the raised surfaces (16) to determine the orientation of the hook portion.

As to claim 2, the raised surfaces (16) comprises a pair of bumps located on opposite sides of the body (12).

As to claims 3-4, the handle portion further comprises a contoured rear end configured to facilitate one-handed use of the device and comprising a pair of enlarged lobes (16) spaced apart from one another by a connecting segment (Fig. 6), with the enlarged lobes and the connecting segment each having a thickness, with the thickness of each of the enlarged lobes is greater than the thickness of the connecting segment.

As to claim 5, the ratio of the thickness of each of the enlarged lobes to the thickness of the connecting segment is from about 2 (see Fig. 6). Alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made to size the device as claimed for this configuration of the device is only a design choice and a minor modification of McKnight device would provide a device as recited in the claim.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 703-306-3420. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J Milano can be reached on 703-308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Vy Q. Bui', with a horizontal line underneath.

Vy Q. Bui

03/03/2004